

EX PARTE OR LATE FILED

RECEIVED

LAW OFFICES
GINSBURG, FELDMAN AND BRESS
CHARTERED
1250 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 637-9000

JAN 24 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CORRESPONDENT OFFICE
9, RUE BOISSY D'ANGLAS
75008 PARIS, FRANCE

RODNEY L. JOYCE
(202) 637-9005

TELECOPIER (202) 637-9195
TELEX 4938614

January 24, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: ET Dkt. No. 94-32 (Ex Parte Filing)

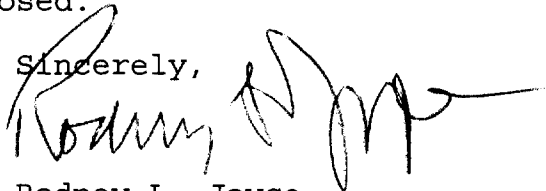
Dear Mr. Caton:

Today, representatives of In-Flight Phone Corp. met with the FCC staff personnel named below to discuss issues raised by In-Flight in a letter which it filed in this proceeding today:

Don Gips, Office of Plans and Policy
Bruce Franca, Office of Engineering and Technology
Steve Sharkey, Office of Engineering and Technology
Peter Tenhula, Office of General Counsel

A copy of that letter is enclosed.

Sincerely,



Rodney L. Joyce
Counsel for In-Flight Phone Corp.

Enclosure

cc (w/enc.) (by hand) Don Gips, OPP
Bruce Franca, OET
Steve Sharkey, OET
Peter Tenhula, OGC

No. of Copies rec'd
List ABCDE

244

RECEIVED

JAN 24 1995

LAW OFFICES
GINSBURG, FELDMAN AND BRESS
CHARTERED
1250 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 637-9000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CORRESPONDENT OFFICE
9, RUE BOISSY D'ANGLAS
75008 PARIS, FRANCE

RODNEY L. JOYCE
(202) 637-9005

TELECOPIER (202) 637-9195
TELEX 4938614

January 24, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: ET Dkt. No. 94-32 (Ex Parte Filing)

Dear Mr. Caton:

While the Commission should allocate the 2390-2400 MHz band to a new airline audio and video programming service ("AAVS") for the reasons In-Flight already has explained,^{1/} I write now to let you know In-Flight has concluded that AAVS also could use the 4660-4685 MHz band, another band whose allocation is the subject of this proceeding. However, if AAVS operated on the 4660-4685 MHz band rather than the 2390-2400 MHz band, AAVS licensees would need to provide more channels of programming to make the service economic than would be necessary if they operated on the 2390-2400 MHz band. This is because infrastructure would be substantially more expensive if the service were provided in the higher band. While five megahertz of spectrum would be necessary for an AAVS licensee operating on the 2390-2400 MHz band, we believe that from 7.5 to 10 megahertz would be needed if the licensee operated on the 4660-4685 MHz band.

For reasons summarized below, the public interest would require that the Commission allocate the 4660-4685 MHz band to AAVS in the unlikely event it were to find a way lawfully to allocate the 2390-2400 band to some other service:

- o The FCC cannot allocate the 4660-4685 MHz band to the newly proposed Fixed and Mobile Service ("FMS") consistent with Section 309(j) of the Communications Act. That provision prohibits the Commission from allocating a band to a service whose licenses will be awarded by auction unless the agency determines at the time of the allocation that the "principal use" of the newly allocated band is "reason-

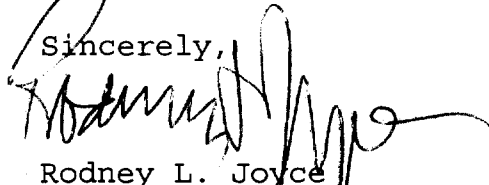
^{1/} Comments of In-Flight (ET Dkt. No. 94-32, Dec. 19, 1994); Reply Comments of In-Flight (ET Dkt. No. 94-32, Jan. 6, 1995).

William F. Caton, Acting Secretary
January 24, 1995
Page 2

ably likely to involve" provision of subscriber-supported services. FMS licenses plainly would have to be awarded by auction since awarding licenses by auction is the only practical way the agency could make the license assignment process work for a service category as broad as FMS. But licenses to provide FMS on the 4660-4685 MHz band cannot be awarded by auction consistent with Section 309(j) since the record provides no basis for a finding that it is "reasonably likely" that FMS licensees would provide primarily subscriber-supported services. To the contrary, the record shows that at least five of the six services proposed for this band, including AAVS, are likely to be either entirely or substantially non-subscriber-supported.^{2/}

- o The record as well as the Commission's own tentative conclusions in the Notice show that there is a greater public interest justification for allocating spectrum to AAVS than to any of the other five discrete services that have been proposed for the 4660-4685 MHz band.
- o Allocating from 15-20 megahertz of the 4660-4685 MHz band to AAVS would permit head-to-head AAVS competition via two AAVS licensees while still leaving part of the band for allocation in this proceeding to one or more additional services.

Sincerely,



Rodney L. Joyce
Counsel for In-Flight Phone Corp.

^{2/} The five services, other than AAVS, that have been proposed for this band are private land mobile, broadcast auxiliary, private OFS, MSS feeder links, and MMDS return links. Of these five services, the only service that even arguably would be subscriber-supported is MMDS return links. Nor is there any basis for the Commission to conclude that AAVS is likely to be a subscriber-supported service. In fact, it is likely that AAVS will be largely advertiser supported.